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FOR IMMEDIATE RELEASE

Nogales City Council Found in Violation of Open Meeting Law

(Phoenix, Ariz. – July 9, 2008) An investigation by the Attorney General's Office has concluded that the Nogales City Council violated the state Open Meeting Law earlier this year. The violation occurred when a proposed order to appoint new city officials, signed by four Nogales City Council members, was discussed by a quorum of the council outside of a properly noticed meeting.

The investigation concluded that an April 1 letter with a proposed motion to appoint a new city manager, mayor and city council member was the result of a series of non-public discussions among Nogales City Council members.

The Nogales City Council is composed of seven members, including the mayor. In November 2007, Nogales Mayor Ignacio Barraza passed away unexpectedly and created a vacancy on the city council.

The motion outlined in the April 1 letter proposed appointing sitting city council member Octavio Garcia-Von Borstel as mayor, which then created a vacancy on the City Council. The motion also proposed to fill that vacancy by appointing Ramon Felix to that seat. The City Manager position was vacant prior to April 2, 2008, and the motion proposed appointing Jaime Fontes to fill that position.

According to the report, Nogales City Council members violated the Open Meeting Law by splintering the quorum and holding serial discussions with a majority of the members of the council about these appointments. The Nogales City Council properly ratified the appointments on April 11 and corrected that violation.

In lieu of filing a court action against the Nogales City Council members, the Attorney General's Office Open Meeting Law Enforcement Team (OMLET) recommended that the Nogales City Council adopt the following provisions to resolve this matter:

- Nogales City Council members John Jackson, Armando Lopez, Jose Padilla, Arturo Garino, Nubar Hanessian and Mayor Octavio Garcia-Von Borstel will each pay a \$250 penalty to the City of Nogales general fund.
- The Nogales City Council will review the investigation's findings and recommendations during its next City Council meeting and formally accept the findings. The Council must also make copies of the findings available to the public at the meeting and invite public discussion.
- The City of Nogales will hire a compliance officer for a period of one year. The compliance officer must be approved by the Attorney General's Office, and at the end of one year the officer must issue a report on whether the Council remained in compliance with the Open Meeting Law.
- All City Council members will participate in Open Meeting Law training.

The investigation was prompted by a complaint filed last earlier this year by then Nogales City Attorney Jan Smith-Florez.

Under Arizona's Open Meeting Law, "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A meeting is defined as a "gathering in person or through technological devices" of a quorum of members. Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussion with a majority of the public body members.

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